

Notice of Allowability

Application No.

09/780,230

Examiner

Jeffrey T. Barton

Applicant(s)

MANZ ET AL.

Art Unit

1753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 1 November 2004.
2. ☒ The allowed claim(s) is/are 19-21.
3. ☒ The drawings filed on 9 February 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the specification:

- a. After the title, please replace the sentence: "This application is a continuation of application serial no. 08/226,605, filed April 12, 1994." with "This application is a continuation of application serial no. 08/226,605, filed April 12, 1994, now U.S. Patent No. 6,280,589."

Response to Amendment/Arguments

2. Applicant's arguments, see Section II (pages 3 and 4) of the amendment filed 1 November 2004, with respect to the rejections of claims 19-21 under 35 U.S.C. §112(2) have been fully considered and are persuasive, in light of the amendments made (Arguments 1-3) and reference to the specification (Argument 4). The rejection of claims 19-21 has been withdrawn.

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3. Applicant's arguments, see Section III (page 4) of the amendment filed 1 November 2004, with respect to the rejection of claims 19-21 under the judicially created doctrine of obviousness-type double patenting have been fully considered and are persuasive, for reasons detailed below in the statement of reasons for allowance. The rejection of claims 19-21 has been withdrawn.

Allowable Subject Matter

4. Claims 19-21 are allowed.

5. The following is an examiner's statement of reasons for allowance:

In response to the obviousness-type double patenting rejection made in the office action of 30 July 2004, applicant submitted an unsigned terminal disclaimer that was not approved. This disclaimer would have reduced the term of a patent granted on this application to the expiration of U.S. Patent No. 6,280,589. However, a terminal disclaimer having this effect had already been filed on 11 July 2003 and approved. This earlier disclaimer had been filed in response to an obviousness-type double patenting rejection over claims 1, 4, and 5 of U.S. Patent No. 6,423,198 made in the office action of 11 March 2003. Because U.S. Patent No. 6,423,198 is also subject to a terminal disclaimer over U.S. Patent 6,280,589, the examiner believes that no undue extension of patent rights will result from allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

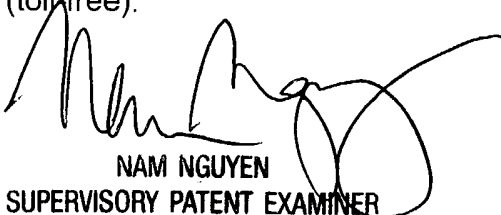
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Jeffrey Barton, whose telephone number is (571) 272-1307. The examiner can normally be reached Monday-Friday from 8:30 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen, can be reached at (571) 272-1342. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll free).

JTB
December 6, 2004


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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700